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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

NO._____

LEROY CRUMLEY, ALIAS LEO CRUMLEY
Petitioner,

V.

STATE OF ALABAMA,
Respondent

BRIEF AND ARGUMENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF ALABAMA

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I.

QUESTION PRESENTED FOR REVIEW

When one is taken into custody and advised of his constitutional rights as required by *Miranda* is a voluntary statement made thereafter which is not the result of an interrogation or questioning admissible into evidence.

II.

ARGUMENT

It must be noted that upon the original submission of this cause to the Court of Appeals of Alabama there was no

argument based upon *Miranda* and the appellant's eighty page brief contained no mention or citation of *Miranda* or any similar decision. The reason for this is quite obvious—that holding has no application in this factual situation.

The record reflects that on the night the petitioner was arrested the sheriff placed him in jail, advised him of his constitutional right to an attorney; that he didn't have to make any statement; that anything he said could be used against him; and that he had a right to an attorney before he was interrogated or questioned (R. p. 87).

Of course, this is not a letter perfect *Miranda* warning for the sheriff did not state that in advising the petitioner of his "constitutional rights" he advised that if the petitioner could not afford to employ an attorney one would be appointed to represent him. However, looking further into the record we see that the sheriff gave the petitioner a local telephone directory and allowed the petitioner to phone a local law office (R. p. 110). There is no doubt that the sheriff made it clear to the petitioner, shortly after he was arrested, and before he made the statement in issue, that he was entitled to have an attorney (R. p. 110).

After the petitioner was advised of his right to have an attorney and on the next day the petitioner posed a question to a deputy sheriff which is now stated to be the product of interrogation. Absolutely nothing in the record supports the present conclusion by counsel in brief that "It seems implicit that in such circumstances any conversation entered into by the officer with CRUMLEY had definite interrogative overtones." The statement as it appears in the record at page 111 is "He asked me what we were doing with the stuff we were taking out of the car." This is a statement

which was initiated by the petitioner and nothing reveals it to be the product of an interrogation, but, to the contrary, the witness stated that he never questioned or interrogated the petitioner (R. p. 111). In the brief of counsel on the appeal to the Court of Appeals of Alabama at page 76 the following statement is made referring to the question asked by the petitioner:

> "This testimony clearly shows *the defendant was only making an inquiry* of a general nature and his words could not be interpreted to show ownership or personal relation or knowledge of any of the exhibits taken out of the car." [Emphasis supplied]

There it was alleged that the *defendant was making an inquiry.* Now we are told that the logical surmise . . . implicit in the circumstances . . . considering the totality of the circumstances . . . is that this statement was the produce of an interrogation. This is not supported by the record.

III.

CONCLUSION

Therefore, with the showing of a fair warning, the absence of any interrogation, and the initiation of the statement by the petitioner we believe that the Court of Appeals of Alabama, not having written to this question, should not be reversed and your respondent respectfully submits that the petition for writ of certiorari should be denied.

Respectfully submitted,

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IV.

CERTIFICATE

I, Robert P. Bradley, one of the attorneys for respondent, and a member of the Bar of the Supreme Court of the United States hereby certify that on the 15th day of July 1969, I served a copy of the foregoing brief and argument in opposition to petition for writ of certiorari to the Court of Appeals of Alabama, on the attorneys for the petitioner, by mailing two copies in duly addressed envelopes, to said attorneys of record as follows:

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